Chosun Il Bo America, Inc., d/b/a Chosun Daily News *and* Professional & Clerical Employees of the International Ladies' Garment Workers' Union, AFL–CIO. Cases 2–CA–23870 and 2–RC–20783

July 29, 1991

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On January 31, 1991, Administrative Law Judge Eleanor MacDonald issued the attached decision. The Respondent and the Charging Party filed exceptions and briefs, and the General Counsel filed a brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings,[1] findings,[2] and conclusions[3] and to adopt the recommended Order[4] as modified.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Chosun Il Bo America, Inc., d/b/a Chosun Daily News, New York, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

Substitute the following for paragraph 2(b).

''(b) Post at its facility in New York, New York, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.''

IT IS FURTHER ORDERED that the election in Case 2–RC–20783 is set aside and the petition is dismissed.

Polly Chill, Esq., for the General Counsel.
J. Christopher Jung, Esq., of New York, New York, for the Respondent.
Brent L. Garren, Esq., of New York, New York, for the Charging Party.

DECISION

STATEMENT OF THE CASE

ELEANOR MACDONALD, Administrative Law Judge. This case was tried in New York, on July 2 and 3, 1990. The complaint issued on November 16, 1989, and amended on June 7, 1990, alleges certain violations of Section 8(a)(1) and (3) of the Act. An election was held in the unit of employees on November 9, 1989, resulting in a tie vote and no majority for the Union. The objections filed by the Charging Party on November 14, 1989, raise substantially the same issues of fact as the amended complaint.[1]

On the entire record, including my observation of the demeanor of the witnesses, and after considering the briefs filed by the General Counsel, the Respondent, and the Charging Party in September 1990, I make the following

FINDINGS OF FACT

I. JURISDICTION

Respondent, a domestic corporation with an office in New York, New York, is engaged in the publication, circulation, and distribution of the Chosun Daily News. Respondent admits and I find that it is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES AND OBJECTIONS TO ELECTION

A. *Background*

The Chosun Daily News is a daily Korean language newspaper. Many of its employees speak very little English. Although the record is not complete on this point, Respondent is apparently owned by an entity located in Korea. That entity has been referred to by various witnesses as headquarters.

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

[2] In the absence of exceptions, we adopt pro forma the judge's recommendation that Objection 6 be overruled.

[3] We agree with the judge that the Respondent's extensive and serious unfair labor practices render the possibility of a fair rerun election slight and that a *Gissel* bargaining order is warranted. The judge also noted that approximately three-quarters of the employees subjected to the Respondent's unfair labor practices are still employed and the management official responsible for virtually all the unfair labor practices is still in charge of the office. Thus, even assuming that these factors are relevant to the propriety of a *Gissel* bargaining order, they do not militate against a bargaining order in this case. See *Action Auto Stores*, 298 NLRB 875 (1990).

In finding that a bargaining order is warranted to remedy the Respondent's unfair labor practices, we find that its obligation to bargain commenced on September 28, 1989, the date it embarked on its course of unlawful conduct. *Trading Port, Inc.*, 219 NLRB 298, 301 (1975). The judge's decision is accordingly modified to the extent that it makes that obligation commence on September 27, 1989.

[4] The Charging Party has excepted to the judge's recommended Order contending that the Respondent should be required to post the notice to employees in both Korean and English. The Charging Party notes that Korean is the language used at the Respondent's facility and that many of the employees do not speak or read English. We find merit in this exception and we shall make the appropriate modification to the judge's recommended Order.

[1] The one exception is Objection 6 which alleges that Respondent threatened employees with discharge in retaliation for union support.

The offices of Respondent are not large and most employees work in a space where they can observe what is going on throughout the entire enterprise.

By a stipulated election agreement dated October 17, 1989, Respondent and the Union agreed that the appropriate collective-bargaining unit of Respondent's employees was as follows:

> *INCLUDED*: All full-time and regular part-time employees in the advertising, editorial, subscription and typesetting departments employed by the Employer in or out of its 2 West 32nd Street facility, New York, New York.
>
> *EXCLUDED*: All confidential employees and employees of Chosun Il Bo, Seoul, Korea, on temporary assignment, and guards and supervisors as defined in the Act.

An election was held on November 9, 1989, in a unit which consisted of 17 employees. Following the counting of the challenged ballot, the vote was 7 for the Union and 7 against.

The complaint alleges that Respondent, through its president, Kil Joong Kim:

(1) Changed the hours of work of its employees; (2) required an employee to work on Fridays; (3) threatened to close the newspaper; (4) imposed a new disciplinary policy for lateness; (5) increased the pay for Saturday work; (6) informed certain employees that they were on probationary status; (7) promised to hold a company picnic; (8) promised to institute a health insurance plan; (9) interrogated employees; and (10) solicited employees to abandon their support for the Union.

The complaint alleges that the unfair labor practices committed by Respondent are so serious and substantial that the possibility of erasing their effects and of conducting a fair rerun election by the use of traditional remedies is slight. The complaint seeks a bargaining order based on the authorization cards signed by unit employees.

In general, all the witnesses in this proceeding testified truthfully to the best of their recollections. Thus, I have credited and relied on the testimony of all the witnesses except in a few instances where the recollection of a particular witness is inexact and is controverted by documentary evidence.

B. *The Evidence*

1. The organizational campaign and demand for recognition

Two Korean-speaking organizers employed by the Union were responsible for organizing the employees of Respondent. In addition, the director of organization of the Union, Jeff Hermanson, met with a group of the employees in late June or early July 1989, and discussed with the employees their rights under the Act, the signing of authorization cards, voluntary recognition, the holding of an election, and the conduct of collective-bargaining negotiations.[2] Hermanson met with the employees again before the Union requested recognition from Respondent when the Union had obtained signed authorization cards from a majority of the employees in the unit.

The testimony concerning the solicitation and signing of the authorization cards is uncontroverted. Those employees of Respondent who testified concerning their own authorization cards made it clear that they understood that signing the card gave the Union the right to represent them in collective bargaining and that by signing the card they were expressing an intention to join the Union. Certain witnesses testified that they solicited cards from fellow employees. As to all the authorization cards introduced herein, these witnesses testified that they asked their coworkers to sign after having explained that a signed authorization card gave the Union the ability to represent the employees and bargain with the Company. No evidence at all was presented which suggested any misrepresentation or impropriety in connection with the authorization cards. Further, all the employees who solicited cards explained their meaning and purpose in the Korean language.[3]

On September 27, 1989, Hermanson accompanied by organizer Francisco Chang and Union counsel Brent L. Garren, Esq., went to offices of Respondent and met with Kil Joong Kim, the president of Respondent.[4] Hermanson read a letter that had been prepared by the Union requesting recognition and a meeting to negotiate a collective-bargaining agreement.[5] At the bottom of the letter were printed the names of 12 of Respondent's employees who had signed authorization cards for the Union. Apparently, the letter was both read and handed to Kim.

Kim responded that the Chosun Daily News was subsidized from Korea, that it was losing money and that it would likely go out of business. He said that labor troubles would be one more reason for Korean headquarters to consider ending the business. Kim declined to recognize the Union. He said he could not afford to pay the employees more than they were earning and that he could not afford to increase benefits.[6]

The Union filed its petition on the morning of September 28, 1989, together with 13 signed authorization cards.[7]

2. Respondent's actions

On September 28, 1989, at the morning editorial meeting, Kim told the employees that their working hours were being shortened by one-half hour.[8] Instead of working from 8:30 a.m. to 6 p.m., they would henceforth work from 8:30 a.m. to 5:30 p.m. Kim said that anyone who reported late to work, took too long for lunch, or left early without authorization would receive a yellow slip; if an employee accumulated two

[2] Hermanson's remarks were translated by the organizers.

[3] Employee Kyung Sook Kim testified that her card was dated September 26, 1989, whereas it had actually been signed on September 28. However, this testimony is clearly erroneous: the card had been given to union counsel on September 27 and then filed along with the Union's petition early on the morning of September 28; it is date-stamped by the Regional Office to that effect. Kim stated that she was told the purpose of the card was to get union membership.

[4] Although Hermanson was not sure whether the meeting took place on September 27 or 28, other evidence, both documentary and testimonial, establishes that the meeting was held on September 27.

[5] After Hermanson read the letter in English, Chang read it in Korean.

[6] Kim did not testify in this proceeding.

[7] The Union had 12 signed cards in its possession when it demanded recognition on the morning of September 27, 1989. One more was obtained before the petition was filed on September 28.

[8] Editorial meetings are held on weekdays at 9 a.m.

yellow slips, automatic discharge would ensue. The evidence shows that the employees had never been told about a system of yellow slips before. Kim added that the paper was facing financial problems and that the employees should work harder.

On September 29 at the editorial meeting, Kim said that employees who worked on Saturday would receive more money for their work.[9] Previously, employees who worked on Saturday were given $10 cash; now they would receive $20. Kim also informed the employees that new employees would be on a 3-month probationary period during which they would have to meet the expectations of the Company or fail to be retained. This announcement had the effect of placing three recently hired employees on probation. The evidence shows that no mention of a probationary period had been made to the employees before this day. Finally, Kim told the employees that the paper was having financial problems and that headquarters might consider closing the Company for that reason.

The managing editor of Respondent, Yong Jong Chun, testified that ''a long time ago'' he had advised Kim to increase the Saturday pay. There was no other testimony concerning the decision to grant a Saturday pay increase.

On September 29, one of the advertising department employees held a small party at his home. Kim and most of Respondent's employees were present. Kim said he was planning to have a company picnic and asked everybody how they felt about such an idea. The evidence shows that a picnic had been held 2 or 3 years before. There is no other evidence as to the Company's practice concerning picnics.

On September 28 or 29, 1989, Kim called employees Sook Lyol Park and Eun Hee Park into his office. Both of these ladies had signed authorization cards for the Union; the first had obtained the signatures of three of her fellow employees on union cards and the latter had obtained five signatures. Kim said he was sorry they had joined the Union without consulting him. He said he had given them special consideration but that now they would have to report to work one-half hour earlier every day so that they could attend the editorial meetings. Before this meeting, both employees had reported to work at 9:30 a.m. Kim did not offer either employee more pay for the extra work. Kim said the Company might have to close one day, but he said this had nothing to do with the Union. The record shows that both employees came to work at 9 a.m. for some time after Kim made this request. A few days after this meeting, Kim asked Sook Lyol Park to work extra hours on Fridays; she refused.

On October 5, 1989, Kim called all the employees who had signed authorization cards for the Union into his office.[10] He told them that the Company was having financial problems and that ''by joining the Union it can get worse.'' Headquarters was planning to set up a branch in Chicago and this might well lead to further support for the New York-based paper, but joining the Union would not improve the situation. If the New York paper had financial problems, headquarters might close the New York paper. The head office might decide to close the paper if it heard that the employees had joined the Union. Kim said he would leave the employees alone in his office for a while so that they could consider canceling the union cards they had signed and reconsider the whole process of unionization. He urged the employees to postpone their organizing efforts and give him until June 30, 1990, when the Company would provide more benefits for the employees and he mentioned particularly medical benefits. After Kim left the employees alone they had a discussion and one employee said she would give up the Union while the others said they would stick to the Union. The evidence shows that Kim had never mentioned medical benefits to his employees before this occasion.

The next day, October 6, 1989, Kim called four or five of the employees who had signed cards for the Union into his office individually. The evidence shows that Kim held similar discussions with each such employee. Kim said that he had asked each employee about the Union and that more people had said they would give up the Union. Kim promised the employees that the Company could do something such as providing medical benefits and improving other working conditions, and he said he wanted the employees to reconsider about the Union. He told one employee that he was not pushing them to give up the Union but that, the older employees had told him that they would give it up. In one instance, Kim exchanged a written promise to give medical benefits by June 30, 1990, for a written promise by an employee that if he granted the benefits she would give up the Union.

3. Employee turnover

Respondent did not introduce any evidence relating to employee turnover in the appropriate unit. However, the record reveals that one employee quit after the election, two employees left in January 1990, and one employee went back to Korea on assignment. There was no evidence that the supervisory staff changed in any way.

C. *Discussion and Conclusions*

1. Discrimination, threats, and promises

The facts show that on September 28, 1989, the very day after the Union informed President Kim that it claimed to represent a majority of Respondent's employees, Kim shortened the regular working hours of the employees by one-half hour. Employees were now to leave work at 5:30 p.m. instead of 6 p.m. Further, on September 28 or 29, Kim told Sook Lyol Park and Eun Hee Park that they would now be required to report to work one-half hour earlier than they were accustomed to do without any extra pay. During this meeting, Kim told the two employees that he was sorry that they had joined the Union without consulting him. Finally, Kim asked Sook Lyol Park to work extra hours on Fridays, but she refused to do so. Respondent presented no witness who established a business justification for changes in the hours of the unit employees coming immediately after the Union requested recognition.[11] Respondent's opposition to the Union is well established in the record. Kim's first reaction when he heard of the employees' organization effort was

[9] Certain employees worked on Saturdays from 8:30 or 9 a.m. until noon.

[10] The names of the signatories had been printed at the bottom of the letter given to Kim on September 27, 1989. The employees at the paper were generally aware of these names.

[11] Kim did not testify about the financial troubles he kept referring to in his conversations with union agents and employees. In the absence of credible evidence about these financial difficulties, I cannot make any finding that they did in fact exist.

that labor troubles would be a reason for headquarters to consider ending the business. This was said before any demands were made or any ''trouble'' was on the horizon. Moreover, Kim's later statements shed light on his motivation. He told the employees that if they joined the Union the Company's financial troubles would get worse and that headquarters might decide to close the Company if it heard that employees had joined a union. He urged the employees to postpone their organizing efforts and tried to obtain promises from the employees that they would reconsider joining the Union. In the absence of any testimony from Respondent giving any other reason for the changes in employees' hours of work, and in view of Respondent's clear and consistent opposition to the Union, I find that the changes were made to discourage Respondent's employees from supporting the Union. Kim used a carrot and stick approach: he reduced the hours of work generally so that employees would see that they did not need the Union to obtain better hours and he increased the hours of two union supporters to show what would happen to those who supported the organizing efforts. Respondent thus violated Section 8(a)(1) and (3) of the Act. Further, Respondent violated Section 8(a)(1) of the Act by asking Sook Lyol Park to work extra hours on Fridays.

As described above, Kim informed Respondent's employees of a new disciplinary policy regarding lateness and early departures at the first editorial meeting following the Union's demand for recognition. Kim said that any employee who was late twice would be dismissed. Based on Respondent's demonstrated antiunion animus and the timing of the introduction of the new policy, I find that the new disciplinary policy was imposed in retaliation for the employees' efforts to be represented by the Union. Respondent violated Section 8(a)(1) by informing its employees of the new disciplinary policy.

Respondent continued its campaign against the Union at the editorial meeting of September 29, 1989. At that meeting, Kim announced that the payment for Saturday work would be doubled. Although Managing Editor Chun testified that he had suggested that Saturday pay should he increased ''a long time ago,'' there was no further testimony about the circumstances of the increase nor any showing that Kim had made the decision to grant the increase before he learned of the Union on September 27. Based on the timing of the pay increase and Respondent's well-documented opposition to the Union, I find that the increase was granted to discourage the employees from supporting the Union. Respondent thus violated Section 8(a)(1) and (3) of the Act.

Also at the meeting of September 29, Kim announced the imposition of a new probationary policy; employees would now have a period of 3 months' probation at the end of which they could be discharged. By virtue of this announcement, three employees were placed on probation. In view of the timing of the announcement and Respondent's demonstrated opposition to the Union, I find that Respondent violated Section 8(a)(1) of the Act by imposing the new probationary period.

During the party held on September 29, Kim told employees he was planning a company picnic. The last picnic had been held 2 or 3 years before and there is no evidence that Kim had planned the event before he learned of the Union. Based on Respondent's opposition to the Union and on the timing of this announcement, I find that Respondent violated Section 8(a)(1) of the Act by promising to hold a picnic.

Respondent continued its campaign against the Union on October 5. On that day, Kim called all the union supporters into his office and told them that the Company was having financial troubles and that joining the Union made things worse. If the paper had financial troubles, headquarters might close the Company. In fact, headquarters might close the paper if it heard that employees had joined the Union. Although Kim also referred to certain unexplained financial problems, he provided no facts to back up his reference; the only part of his message that was clear was that the mere fact that the New York employees had joined the Union could cause a loss of financial assistance from headquarters and closure of the New York paper. *El Rancho Market*, 235 NLRB 468 471 (1978), enfd. 603 F.2d 223 (9th Cir. 1979). Urging the employees to reconsider their membership in the Union, Kim promised that if the employees waited until June 30, 1990, the Company would provide more benefits including medical benefits. Kim asked the employees repeatedly whether they would give him more time and give up their support for the union campaign then underway. The evidence makes it clear that Kim threatened the employees that the paper might close if they persisted in their support for the Union, he asked them if they would give up the Union and he promised them medical benefits if they abandoned their organizing effort. Respondent thus violated Section 8(a)(1) of the Act. Kim's unlawful threats, interrogations, and promises were repeated on October 6 when he spoke to certain employees individually. Respondent also violated Section 8(a)(1) the Act by Kim's action on October 6.

2. The election

The Union's objections to the election are valid to the extent that I have found above that Respondent engaged in unfair labor practices during the critical period from the date of the filing of the petition on September 28, 1989. I find that the following objections are meritorious: (1) granting wage increases; (2) promising improved benefits; (3) coercively interrogatomg employees; (4) instituting a disciplinary system; (5) ordering employees to work longer hours; and (7) threatening to close the newspaper. I shall recommend that Objection 6 be overruled for lack of evidence. Based on the Board's well-established standards, the election should be set aside. ''Conduct violative of Section 8(a)(1) is, a fortiori, conduct which interferes with the exercise of a free and untrammeled choice in an election. *Dal-Tex Optical Co.*, 137 NLRB 1782, 1786 (1962).

3. The Union's majority status

As stated above, Respondent and the Union stipulated to the appropriate unit herein and agreed that there were 17 unit employees. The evidence detailed above shows that on September 27 when the Union demanded recognition from Respondent, it was in possession of 12 valid authorization cards signed by unit employees. This was a clear majority of the employees in the appropriate unit.

4. Propriety of a bargaining order

The amended complaint herein alleges that on September 27, 1989, the Union represented a majority of Respondent's

employees in the appropriate unit and it requests the issuance of a bargaining order. No doubt through inadvertence, the amended complaint fails to allege that the Union requested recognition as the collective-bargaining representative of the employees in the appropriate unit and the amended complaint fails to allege that Respondent refused to recognize and bargain with the Union. However, the undisputed facts set forth above show that the Union requested recognition both orally and in writing on September 27 and that Respondent refused to recognize the Union. These facts were fully litigated herein. Respondent is aware that General Counsel is relying on these facts because the complaint requests issuance of a bargaining order based on the allegations that the Union was the majority representative and that the employee sentiment would be better protected by the issuance of a bargaining order rather than the Board's traditional remedies. I find that Respondent has been placed fully on notice of the remedy requested by General Counsel and that Respondent would not be denied due process if I were to find that it violated Section 8(a)(5) of the Act by refusing to bargain with the Union on September 27, 1989, when the Union requested recognition. *NLRB v. Solboro Knitting Mills*, 572 F.2d 936, 944 (2d Cir. 1978); *Crown Zellerbach Corp*., 225 NLRB 911, 912 (1976).

I have found above that Respondent threatened its employees that headquarters would close the paper if it heard that the employees joined the Union. Respondent granted its employees reduced working hours and more pay and Respondent promised its employees medical and other benefits in order to induce them to abandon the Union. I have found that Respondent placed new employees on probation, imposed a new disciplinary policy, and required union supporters to work longer hours. Respondent interrogated its employees about their support for the Union and it overtly solicited its employees to abandon the Union in return for promises of certain benefits. These are serious unfair labor practices which have a tendency to undermine majority strength and impede the election processes. The unit herein consists of only 17 employees who worked together in a small space. None of the employees could fail to be aware of and directly affected by Respondent's efforts to undermine support for the Union. All were subject to the new disciplinary system of yellow cards and all were beneficiaries of the shortened daily hours. President Kim, the highest management official of Respondent, addressed the meetings of employees and then called employees into his office and continued the antiunion campaign. The probability of erasing the effects of these thorough-going and pervasive efforts and of ensuring a fair rerun election is slight. As the Board has emphasized, ''the specter of job loss and of closing once conjured up is not easily interred.'' *El Rancho Market*, 235 NLRB 468, 476 (1978). Respondent's employees, having been told by the highest management official that headquarters might close the paper because they joined the Union, will find it hard to forget that warning. In addition to threats of plant closing, Respondent committed other ''hallmark'' violations which are generally found to support the issuance of a bargaining order. These violations included the grant of a Saturday pay increase, the grant of a shorter work day, and the requirement that two union adherents report to work one-half hour earlier with no increase in pay. *NLRB v. Jamaica Towing*, 632 F.2d 208, 212–213 (2d Cir. 1980).

There has been neither proof of extensive employee turnover nor of any change in management personnel at the newspaper such as would militate against the issuance of a bargaining order. As far as the record shows, only 4 employees of the total unit membership of 17 are no longer employed by Respondent. Three-quarters of the employees who were subject to Respondent's unfair labor practices are still in the work force. President Kim, the management official who issued the threats of plant closing and personally pressured the employees to abandon the Union, is still at the head of the New York office. An order simply requiring that Respondent refrain from future unlawful conduct will not eradicate the effects of the serious violations committed in the small unit of employees.

I conclude that in this case employee sentiment, expressed by the signing of a majority of authorization cards for the Union, would be better protected by the issuance of a bargaining order. *NLRB v. Gissel Packing Co*., 395 U.S. 575 (1969).

I find that Respondent violated Section 8(a)(5) and (1) of the Act by failing and refusing to recognize and bargain with the Union after September 27, 1989, as the exclusive representative of its employees in the appropriate unit.

CONCLUSIONS OF LAW

1. The following employees of Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act:

> *INCLUDED*: All full-time and regular part-time employees in the advertising, editorial, subscription and typesetting departments employed by the Employer in or out of its 2 West 32nd Street facility, New York, New York.
>
> *EXCLUDED*: All confidential employees and employees of Chosun Il Bo, Seoul, Korea, on temporary assignment, and guards and supervisors as defined in the Act.

2. Since September 27, 1989, the Union has been the exclusive collective-bargaining representative of Respondent's employees in the unit described above.

3. By reducing the regular hours of work of employees, increasing Saturday pay, and by requiring employees to report to work early without extra pay, Respondent violated Section 8(a)(3) and (1) of the Act.

5. By requesting an employee to work extra hours, Respondent violated Section 8(a)(1) of the Act.

5. By threatening that headquarters might close the paper if its employees joined the Union, informing its employees of a new disciplinary policy, informing its employees of a new probationary policy, and promising to hold a picnic, Respondent violated Section 8(a)(1) of the Act.

6. By coercively interrogating its employees concerning their support for the Union, soliciting its employees to abandon their support for the Union, and promising increased benefits, including medical benefits, if the employees abandoned the Union, Respondent violate Section 8(a)(1) of the Act.

7. Union Objections 1, 2, 3, 4, 5, and 7, in Case. 2–CA–20783 have been sustained by the evidence, and Respondent

thereby interfered with the Board election on November 9, 1989. Union Objection 6 is overruled.

8. By the conduct set forth in paragraphs 3, 4, 5, and 6 above, Respondent interfered with the employees' freedom of choice in the election and precluded any reasonable possibility of a fair and uncoerced rerun election.

9. By failing and refusing since September 27, 1989, to recognize and bargain with the Union as the exclusive collective-bargaining representative of its employees, Respondent has violated Section 8(a)(5) and (1) of the Act.

THE REMEDY

Having found that Respondent has engaged in unfair labor practices in violation Section 8(a)(1), (3), and (5) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act. However, nothing herein is to be construed as requiring Respondent to revoke any benefit already granted to its employees.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[12]

ORDER

The Respondent, Chosun Il Bo America, Inc., d/b/a Chosun Daily News, New York, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Reducing the regular hours of work of employees, increasing Saturday pay and requiring employees to report to work early without extra pay, provided that nothing herein shall be construed as requiring the revocation of any benefit already granted to employees.

(b) Requesting employees to work extra hours.

(c) Threatening that the newspaper might be closed if employees join the Union, informing employees of a new disciplinary policy, informing employees of a new probationary policy, and promising to hold a picnic.

(d) Interrogating employees concerning their support for the Union, soliciting employees to abandon their support for the Union, and promising increased benefits, including medical benefits, if employees abandon the Union.

(e) Refusing to recognize and bargain with the Union as the exclusive collective-bargaining representative of the employees in the unit found appropriate above.

(f) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the appropriate unit described above concerning terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement.

(b) Post at its facility in New York, New York, copies of the attached notice marked ''Appendix.''[13] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date this Order what steps the Respondent has taken to comply.

IT IS FURTHER RECOMMENDED that the election in Case 2–RC–20783 be set aside and that the petition be dismissed.

[12] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[13] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT reduce your hours of work nor increase your pay in order to discourage you from supporting the Union.

WE WILL NOT require you to work extra hours in order to discourage you from supporting the Union.

WE WILL NOT threaten that the newspaper might be closed, inform you of new disciplinary and probationary policies, ask you to work extra hours, promise you benefits, solicit you to abandon your support for the Union nor interrogate you concerning your support for the Union.

WE WILL NOT refuse to recognize or bargain collectively with Professional & Clerical Employees of the International Ladies' Garment Workers' Union, AFL–CIO, as the exclusive bargaining representative of our employees in the following appropriate unit:

> *INCLUDED*: All full-time and regular part-time employees in the advertising, editorial, subscription and typesetting departments employed by us in or out of our 2 West 32nd Street facility, New York, New York.
>
> *EXCLUDED*: All confidential employees and employees of Chosun Il Bo, Seoul, Korea, on temporary assignment, and guards and supervisors as defined in the Act.

WE WILL NOT in any like or relate manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit.

CHOSUN IL BO AMERICA, INC. D/B/A CHOSUN DAILY NEWS